

REMARKS

Reconsideration and allowance are requested. Applicant appreciates the Interview courteously granted by Examiner Qiuwen Mi to Meera Narasimhan on August 18, 2009. The above and ongoing follows the discussions had at the interview.

Antecedence for the above amendments exists in the original application. No new matter has been added by the above amendments or by the present response.

Claims 1-5, 7, 11 and 12 are patentable under 35 U.S.C. 103(a) over Yamashita (JP 06128121 A), Aizawa et al (JP 58079912 A) and Tomono et al. (JP 11279069 A) in view of Hasegawa et al. (JP 2001302525 A) and Larsen et al. (U.S. Publication No. 2005/0113293).

The Examiner relies on each of the references of Yamashita, Aizawa, Tomono, Hasegawa and Larsen as teaching individual components of the claimed invention without providing any basis whatsoever as to where in each reference there is a motivation to combine the five teachings and arrive at the present invention.

The present claims define a composition comprising deep sea fish extract and rooibos in specific percentages which is not taught nor suggested by the references either individually or in combination.

The Examiner's rejections are all based on precisely an "obvious to try" holding which has been repeatedly reversed by the Courts. A statement that modifications of the prior art to meet the claimed invention would have been "well within the ordinary skill of the art at the time the claimed invention was made" because the references relied upon **teach that all aspects of the claimed invention were individually known in the art** (emphasis supplied) is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the

teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). ***">[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.'" *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396 quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).

The Examiner does not provide any reasoning for why one of ordinary skill in the art would be motivated to use both Yamashita and Tomono when both are being relied on as teaching the elimination of active oxygen. Nothing in the abstracts of each of those references teaches or suggests a combination of the two. In fact, they teach away from combining because they teach an either/or alternative with the same results arrived at with either *apalathus linearis* or *Arctostaphylos uva-ursi*. Hasegawa mandates glycosyl-L-ascorbic acid with a combination of one or more other of 19 plant extracts. Thus, if the Examiner relies on Hasegawa for *Equisetum* there is no showing where in the reference there is a teaching or suggestion to use any of the plant extracts without the ascorbic acid required by Hasegawa. Larsen has been relied on as teaching alkaloid boldine. Larsen uses the alkaloid boldine with other compounds for treating different ailments in middle aged and elderly people. The claimed diacetyl boldine works via α -adrenergic antagonist receptors and calcium flow regulation and is not described, taught or suggested by Larsen.

Moreover, nothing in any of the references teach or suggest a combination as effected by the Examiner. The mere fact that references can be combined or modified does not render the resultant combination obvious unless **>the results would have been predictable to one of ordinary skill in the art. *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007).

Furthermore, it is respectfully submitted that the Examiner has not produced a *prima facie* case of obviousness for at least Claims 2-5, 7, and 11 for the additional reason that the limitations of those claims have not been addressed. It should not be left to the Applicant to attempt to reason how the rejection of claim 1 might apply to the dependent claims as it would be based on assumptions and conjecture.

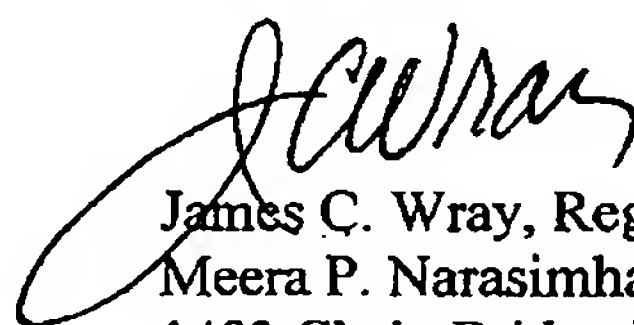
If examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent. *In re Oetiker*, 25 USPQ2d 1443, 1447 (Fed. Cir. 1992) citing *In re Grabiak*, 226 USPQ 870, 873 (Fed. Cir. 1985). The office action does not provide any basis for the rejection of each of the features in at least Claims 10 and 30 and therefore applicant is unable to determine Examiner's basis for the rejection of each of the claims to adequately rebut the rejections. Therefore, as dictated by *Oetiker* "without more applicant is entitled to grant of the patent."

For these additional reasons, and for the reasons set forth regarding the rejection of Claim 1, the rejection of the Claims 2-5, 7 and 11 under 35 U.S.C. 103(a) is also improper, and should be withdrawn.

CONCLUSION

Reconsideration and allowance are respectfully requested.

Respectfully,



James C. Wray, Reg. No. 22,693
Meera P. Narasimhan, Reg. No. 40,252
1493 Chain Bridge Road, Suite 300
McLean, Virginia 22101
Tel: (703) 442-4800
Fax: (703) 448-7397

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